

# **TITLE 1. OFFICE OF ADMINISTRATIVE LAW**

## **NOTICE OF PROPOSED RULEMAKING**

The Office of Administrative Law ("Office") proposes to repeal the following regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### **PUBLIC HEARING**

The Office will hold a public hearing on Tuesday, March 18, 2003, starting at 10:00 a.m., located at 300 Capitol Mall, Suite 1210, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Office requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Office. The written comment period closes at **5:00 p.m. on March 18, 2003**. The Office will consider only comments received at the Office by that time. Please submit comments to:

Melvin Fong  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

### **AUTHORITY AND REFERENCE**

Government Code section 11342.4 authorizes the Office to repeal the regulations that implement, interpret, or make specific section 11340.5 of the Government Code.

### **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

The Office proposes to repeal sections 121-128 of title 1 of the California Code of Regulations (CCR). These regulations establish definitions, and set forth the filing requirements for determination requests, the procedures for publishing a notice, submitting a public comment and an agency response, and for issuing a determination.

Government Code section 11340.5(b) authorizes the Office to issue a determination as to whether a state agency rule is a "regulation" as defined in Government Code section 11342.600 that is subject to the rulemaking requirements of the Administrative Procedure Act (APA; Gov.

Code sec. 11340 et seq.). Since 1986, OAL has issued over 200 determinations pursuant to regulations adopted by OAL for processing determination requests and issuing determinations. These regulations are located at title 1, California Code of Regulations (CCR), sections 121 – 128. These regulations include definitions, the filing requirements for determination requests, the procedures for publishing a notice, submitting a public comment and an agency response, and for issuing a determination.

While the Office has the authority to issue a determination pursuant to Government Code section 11340.5(b), this same statute makes the issuance of a determination a discretionary function of the Office. (Gov. Code sec. 11340.5(b) "the office *may* issue a determination." (Emphasis added.)) In contrast, the regulations proposed for repeal -- sections 121-128 -- implement Government Code section 11340.5(b) and establish the process that the Office is required to follow once it is notified, or learns on its own, of a state agency rule that has not complied with the procedures and requirements of the APA. As a result of the upcoming 20% reduction in the Office's budget (and the 6% and 11% budget cuts already incurred in the prior and current fiscal years, respectively), the Office is no longer able to perform the discretionary function of issuing determinations, in addition to its statutorily mandated duties, with the resources available. Thus, the Office proposes to repeal title 1, CCR, sections 121-128, and Appendix A ("Request for Determination – Form 1013 (1/02)") -- the process that the Office is required to follow for accepting determination requests and issuing a determination.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Office has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None. The repeal of the determination process regulations does not result in any costs or savings to the Office, but allows the Office, in light of the recent reductions in its budget, to better utilize its available resources pursuant to the statutory mandates imposed upon the Office.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Office is not aware of any cost impacts that a representative private person or business would necessarily incur as a result of the proposed action.

Repeal of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination: The Office has determined that the proposed repeal of the regulations does not affect small business. These regulations set forth the procedures for seeking, and issuing, a legal nonbinding opinion from the Office concerning whether a state agency rule, policy or procedure is subject to the Administrative Procedure Act.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Office must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Office invites interested persons to present statements or arguments with respect to alternatives to the proposed repeal of the regulations at the scheduled hearing or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed regulatory action may be directed to:

Debra Cornez, Senior Counsel  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
Telephone: (916) 323-6831

The backup contact person for these inquiries is:

Melvin Fong, Legal Assistant  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 324-7952

Please direct requests for copies of the text (the "express terms") of the regulations that are proposed for repeal, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Fong at the above address.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Melvin Fong at the address or phone number listed above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Office may adopt the proposed order of repeal of the regulations substantially as described in this notice. If the Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Melvin Fong at the address indicated above. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Fong at the above address.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through our website at [www.oal.ca.gov](http://www.oal.ca.gov).